

STATE OF MICHIGAN
COURT OF APPEALS

GRETA M. DELREAL,

Plaintiff,

v

AJAX PAVING INDUSTRIES, INC.,

Defendant/Cross-Plaintiff-
Appellant,

and

THE OAKLAND EXCAVATING COMPANY,

Defendant/Cross-Defendant-
Appellee,

and

WEST SIDE CONCRETE COMPANY,

Defendant/Cross-Defendant,

and

PK CONTRACTING, INC., and NATIONWIDE
FENCE AND SUPPLY, d/b/a RMD HOLDING
LTD,

Defendants.

UNPUBLISHED

August 5, 2004

No. 247277

Oakland Circuit Court

LC No. 01-032293-NO

MELISSA D. BLAKE,

Plaintiff,

v

AJAX PAVING INDUSTRIES, INC.,

Defendant/Cross-Plaintiff-
Appellant,

and

THE OAKLAND EXCAVATING COMPANY,

Defendant/Cross-Defendant-
Appellee,

and

WEST SIDE CONCRETE COMPANY,

Defendant/Cross-Defendant,

and

PK CONTRACTING, INC., and NATIONWIDE
FENCE AND SUPPLY, d/b/a RMD HOLDING
LTD,

Defendants.

Before: Zahra, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

Defendant/cross-plaintiff, Ajax Paving Industries, Inc. (Ajax), appeals as of right following the trial court's order of dismissal in this indemnification action.¹ We affirm in part

¹ The parties stipulated on appeal to the dismissal with prejudice of defendant/cross-defendant, West Side Concrete. MCR 7.218. *Delreal v Ajax Paving Industries Inc*, unpublished order of the Court of Appeals, entered October 8, 2003 (Docket No. 247277).

and reverse in part the trial court's grant of summary disposition in favor of Oakland and its denial of Ajax' motion for summary disposition, and remand for further proceedings.

Ajax claims on appeal that the trial court misinterpreted an indemnity provision contained in the subcontract between Ajax and Oakland and, subsequently, incorrectly granted summary disposition. We agree. This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Glancy v City of Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998). Contractual indemnity is an area of law guided by well-settled general principles. Nonetheless, each case must ultimately be determined by the contract terms to which the parties have agreed. *Grand Trunk Western Railroad v Auto Warehousing*, ___ Mich App ___, ___ NW2d ___ (Docket No. 244246, issued June 10, 2004, slip op at 9); *Triple E Produce Corp v Mastronardi Produce*, 209 Mich App 165, 172-173; 530 NW2d 772 (1995). Indemnity clauses and indemnity contracts are construed in accordance with the general rules of contract construction. *Id.* at 172. The initial question, whether the language is ambiguous, is a question of law. *Port Huron Ed Ass'n MEA/NEA v Port Huron Area Sch Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).

The indemnity provision in question between Ajax and Oakland states, in part:

Subcontractor agrees to indemnify Ajax and MDOT and to hold each of them forever harmless from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, judgments, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature whether arising before or after completion of Subcontractor's work and in any manner directly or indirectly caused, occasioned or contributed to, *or claimed to be caused*, occasioned or contributed to, by any act, omission[,], fault[,], or breach of Subcontractor or of anyone acting under its direction, control, or on its behalf in connection with or incidental to the work of Subcontractor and regardless whether directly or indirectly caused, occasioned or contributed to, *or claimed to be caused*, occasioned or contributed to in part by a party indemnified hereunder or by anyone acting under their direction, control, or on their behalf. [Emphasis added.]

It is unnecessary for us to construe the language of the indemnity provision because it is unambiguous. Oakland expressly agreed to indemnify and hold Ajax harmless from any liability directly or indirectly caused or claimed to be caused by Oakland's act or omissions in connection with or incident to its work as a subcontractor for Ajax. The trial court interpreted the provision to require that Ajax identify an act or omission of Oakland and explain how it directly or indirectly caused the liability. As written, however, the plain language of the provision required Oakland to indemnify when someone *claimed* that it "caused, occasioned or contributed to" the liability, regardless whether the claim was true. Any other interpretation would render the "claimed to be caused" language meaningless. Courts must give effect to every word, phrase, and clause in a contract, and avoid interpretations that would render any part of the contract surplusage or nugatory. *Klapp v United Ins Group Agency, Inc.*, 468 Mich 459, 468; 663 NW2d 447 (2003).

In the underlying case, plaintiff alleged that Ajax' subcontract with Oakland required placement and maintenance of traffic control devices and warnings, that Oakland breached its duty to properly maintain and place the traffic control devices, and that this breach caused the accident and injuries. Therefore, the action arose from a claim that Oakland's act or omission in the course of its work under the subcontract occasioned or contributed to the injury or claim.

However, the indemnification provision is not open-ended. Oakland's obligation to indemnify ended when there was no longer a claim that Oakland bore some responsibility in this case. It is undisputed that Oakland was not working on the construction site at issue on the day of the accident, and that there was no evidence that Oakland did anything to cause plaintiff's alleged confusion in the construction zone. At the very latest, plaintiff stipulated to Oakland's dismissal, with prejudice, on July 17, 2002. On remand the trial court shall determine the point at which there was no longer a claim that Oakland's involvement gave rise to the underlying accident, and the amount of indemnification due to Ajax up to that time.

Reversed and remanded for further consideration. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder